

is a matter for detailed advice in the circumstances of each case. Advice or guidance can be obtained professionally or from a financial regulator.

Reference number	Annex I, Section B(4) and Annex I, Section C(4) of Directive 2004/39/EC	Question No.	33.
Date of question	12/03/2007	Date of answer	8/05/2007
Issue	Foreign exchange – OTC forward agreements – application of MiFID to		
Question	Whether MiFID is applicable to OTC foreign exchange agreements only under Annex I, Section B, paragraph 4 (foreign exchange services where these are connected to the provision of investment services), or OTC foreign exchange agreements are considered to be financial instruments under Annex I, Section C, paragraph 4?		
Answer	<p>Derivatives on currencies listed in Section C(4) of Annex I of MiFID are financial instruments. An entity providing investment services to its clients in relation to these instruments will therefore have to comply with MiFID's authorisation and operational requirements. Spot market foreign exchange agreements are not considered to be financial instruments for the purposes of MiFID.</p> <p>Section B(4) of Annex I lists the provision of foreign exchange services as an ancillary service which applies only to those cases where those services are connected to the provision of investment services. The scope of the ancillary service is therefore restricted only to operations which are related to transactions which form part of an investment service. For example, when an investment firm is given an order to purchase foreign shares and those shares can only be purchased in a currency the client does not own, the firm may engage in foreign exchange operations in order to be able to execute the order.</p>		

Reference number	Annex I, Section B(4) and Annex I, Section C(4) of Directive 2004/39/EC (new answer)	Question No.	120.2
Date of question	31/07/2007	Date of answer	23/04/2008
Issue	Foreign exchange – application of MiFID to		
Question	Are foreign exchange (FX) forwards under MiFID regulation or are they out of scope?		
Answer	<p>Even if FX forwards are qualified as a financial instrument in section C of Annex I to MiFID, their intermediation will be subject to MiFID requirements only in the case there is an investment service or activity performed in the sense of MiFID. In this respect, Annex I section B(4) of MiFID lists "foreign exchange services where connected to the provision of investment services" as an ancillary service, not as an investment service. Thus, FX forward transactions not connected to the provision of an investment service, i.e. commercial FX</p>		

forward transactions, are not covered by MiFID. The qualification of FX forwards as a financial instrument is not important if there is no investment service or activity performed in the sense of MiFID.

The fact that FX forwards are considered as an ancillary service also ensures that there should not be a problem with the functioning of the MiFID passport for investment firms. According to MiFID provisions on cross-border provision of services and establishment of branches, it is not possible to provide an ancillary service cross-border, using the MiFID passport, on a stand-alone basis. This means that only when that service is provided together with an investment service and/or activity it will be covered by the MiFID passport. In this respect, credit institutions have already a broad passport for foreign exchange activities under paragraph 7(b) of Annex I to the 2006/48/EC on the taking up and pursuit of the business of credit institutions.

Moreover, some of the exemptions included in Article 2 of MiFID would exempt most corporations operating FX forwards from the application of MiFID provisions.

However, those Member States who would like to see commercial FX forwards covered by MiFID-alike provisions, could apply them through their national law, as it is the case in some Member States.

Relevant provisions	Annex I, Section B(4) and Annex I, Section C(4) of Directive 2004/39/EC	Question No.	183.
Date of question	16/11/2007	Date of answer	17/01/2008
Issue			
Money transfer sector – application of MiFID to			
Question			
Are the money transfer sector and the foreign currency exchange sector included within the framework of the MiFID?			
Comment or Answer			
The money transfer/remittance sector is not included in MiFID. As a payment service, it is covered by the Payment Services Directive (2007/64/EC). The text of the PSD is available at http://ec.europa.eu/internal_market/payments/framework/psd_en.htm .			
Bureaux de change are not included in MiFID.			

Relevant provisions	Annex I, Section C of Directive 2004/39/EC	Question No.	69.
Date of question	30/04/2007	Date of answer	9/07/2007
Issue			
Sport spread betting – application of MiFID			
Question			
Is sport spread betting included in the scope of the Directive?			
Comment or Answer			
No. Contracts related to sports results are not considered to be financial instruments as defined			